



The Comptroller General  
of the United States

Washington, D.C. 20548

coles

## Decision

**Matter of:** Caldwell Realty, et al.

**File:** B-236519; B-236520; B-236520.2; B-236522;  
B-236523; B-236524; B-236524.2; B-236525;  
B-236526; B-236527; B-236528; B-236529;  
B-236531; B-236532; B-236534; B-236535;  
B-236536

**Date:** August 25, 1989

---

### DIGEST

Protests against termination of contracts for convenience of the government are untimely where filed more than 5 months after procuring agency notified protesters that since initial awards were improper agency would issue new solicitations.

---

### DECISION

Nine individuals and firms<sup>1/</sup> protest the termination for convenience by the Department of Housing and Urban Development (HUD) of their Area Management Broker contracts<sup>2/</sup> and the issuance of new invitations for bids<sup>3/</sup> (IFBs) encompassing the requirements of the terminated contracts for management and related services for single family properties owned or in the custody of HUD within the metropolitan Oklahoma City area.

We dismiss the protests as untimely.

---

<sup>1/</sup> Caldwell Realty; Carl B. Carbin; Arvel Fisk; Charles W. Hebard; J.R. Properties; Mark IV Homes; W.R. Moore Brokerage; Professional Property Management; Bob Williams & Associates.

<sup>2/</sup> Contract Nos. 117-88-311; 117-88-312; 117-88-313; 117-88-314; 117-88-315; 117-88-316; 117-88-318; 117-88-320; 117-88-322; 117-88-323.

<sup>3/</sup> IFB Nos. 78-89-117; 79-89-117; 80-89-117; 81-89-117; 82-89-117; 83-89-117; 85-89-117; 87-89-117; 88-89-117; 89-89-117; 90-89-117; 91-89-117; 93-89-117; 94-89-117; 96-89-117.

046340/139411

The contracts HUD awarded to the protesters were each for a 2-year basic term effective October 1, 1988. In February 1989, the protesters received correspondence from HUD which stated that since the award of each of these contracts was not made to the respective low bidders as required by the sealed bidding procedures in Federal Acquisition Regulation (FAR) part 14, HUD considered their current contracts as "emergency-temporary procurements" only and planned to resolicit the requirements by issuing new IFBs by July 1, with a contract award date of October 1.

In July, HUD's Oklahoma City office published notice that it intended to contract for area management broker services to inspect and manage single family properties under its jurisdiction and that IFB packages would be available on July 7. The new IFBs were issued, and bids were due on August 15. The new IFBs encompass the requirements of the protesters' terminated contracts.


The protesters contend that since the initial awards of their respective contracts were proper, HUD's termination of their contracts and issuance of new IFBs for the same services were improper. The protesters claim that there was no irregularity in the bidding process because neither the FAR nor the original IFBs required HUD to award the contracts to the lowest bidders.

Generally, our Office will not review an agency's decision to terminate a contract for the convenience of the government since that is a matter of contract administration which is not within our bid protest jurisdiction. Special Waste, Inc., 67 Comp. Gen. 429 (1988), 88-1 CPD ¶ 520. However, where the decision to terminate results from the agency's finding that the initial contract award was improper, we will review the protest to examine the award procedures that underlie the termination action. Id.

In this case, however, the awardees' protests of the termination of their contracts are untimely. Our Bid Protest Regulations require protests to be filed not later than 10 days after the basis of protest is known or should have been known, whichever is earlier. 4 C.F.R. § 21.2(a)(2) (1988). While the protesters also challenge HUD's decision to resolicit, the underlying basis of their protests is that the initial awards to them were proper. The protesters knew that HUD had determined that the initial awards to them were improper as early as February 1989. The protesters also knew in February that HUD was considering their current AMB contracts as emergency-temporary procurements only, and that HUD planned to

resolicit the requirements by issuing new IFBs by July 1. Instead of protesting within 10 working days of their February notice of HUD's intention to terminate their contracts or, in any event, within 10 working days of their July notice of the issuance of new IFBs, the protesters waited until August 10 to file their protests. Accordingly, the protests are untimely since they were filed over 5 months after the protesters were first given notice of HUD's intention to terminate their contracts and resolicit.

The protests are dismissed.



Robert M. Strong  
Associate General Counsel